**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL REVISION APPLICATION NO.158 OF 2005**

Yatindra Ram Shukla ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri N.N. Gawankar i/by Ms G.B. Nikam for the Applicant.
Ms Rajeshree Gadhvi, A.P.P. for the Respondent.

**CORAM : A. S. OKA, J.**
**DATE : OCTOBER 04, 2005.**

**P.C.:**

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Applicant has preferred this Revision Application for challenging his conviction and sentence for offence punishable under section 379 of the Indian Penal Code and confirmation thereof in an Appeal.

3. When this Revision Application came up before this Court on 08th June, 2005, this Court passed an order observing that there was no error in the order of conviction. However, a submission was made by the Advocate for the Applicant that case for grant of benefit of the Probation of Offenders Act, 1958 read with section 360 of the Code of Criminal Procedure,

1973 may be considered. This Court, therefore, called for the report of the Probation Officer. Accordingly, the report of the Probation Officer dated 27th June, 2005 has been received by this Court. The District Probation Officer has stated that the present age of the Applicant as per the school record is twenty-four years. The Probation Officer has given particulars regarding members of the family of the Applicant. He has stated that when the present offence was committed by the Applicant, his age was only seventeen years. Considering all the aspects, the District Probation Officer recommended that benefit of section 4(1) of the Probation of Offenders Act, 1958 deserves to be given to the Applicant.

4. My attention has been invited to the decision of the Apex Court reported in 1972 Criminal Law Journal, Page 47 (Abdul Qayum Vs. The State of Bihar). The Apex Court was dealing with a case where conviction was under section 379 of the Indian Penal Code. The Apex Court after considering the report of the Probation Officer observed thus:

> The report of the neighbours is also in his favour. In the end the Probation Officer expressed the view that there is

no report against the character of the offender, no previous conviction has been proved against him prior to this case and in the circumstances mentioned by him the release on probation may be a suitable method to deal with him. He therefore recommended that he be released on probation by getting his father to execute a suitable security. This report in our view does not justify the conclusion that the appellant is either a hardened criminal or is associated with hardened criminals for denying him the benefit of the provisions of the Act. To sentence him to imprisonment would itself achieve the object of associating him with hardened criminals which association the courts thought was a good ground for denying him the benefit of being released on probation. We have no ;doubt that if he is released on probation of good conduct there is hope of his being reclaimed and afforded the opportunity to live a normal life of a law abiding citizen.

In another decision of the Apex Court reported in 1972 Criminal Law Journal, Page 1517 (Daulat Ram Vs. The State of Haryana), the Apex Court held that object of Section 6 of the Probation of Offenders Act, 1958, particularly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences, because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with hardened and habitual criminals who may happen to be the inmates of the jail. The Apex Court held that the section 6 deserves to be liberally construed so that its operation may be effective and beneficial to young offenders who are prone more easily to be laid astray by influence of bad company. In the present case, the Applicant has committed the offence in the year 1998. The Applicant is not at all a hardened criminal or habitual criminal. Considering the young age of the Applicant and other factors stated in the report of the Probation Officer, the report deserves to be accepted. Therefore, I am inclined to grant benefit of the Probation of Offenders Act, 1958 to the Applicant.

5. Hence, I pass the following order:

: O R D E R :

i) The Revision Application is partly allowed.

ii) The order of conviction is confirmed.

iii) Instead of sentencing the Applicant at once to the punishment, the Applicant shall be released on probation on his entering into a bond in the sum of Rs.10,000/- with one or two local sureties in the like amount to appear and receive sentence when called upon during the period of one year and in the meantime, to keep peace and maintain good behaviour.

iv) It is directed that the Applicant shall remain under supervision of the District Probation Officer, Thane during the aforesaid period of one year and shall observe the directions and conditions of the bond of good conduct which is to be furnished by him.

v) The Bond shall be executed before the

Trial Court by the Applicant within a period of one week from the date of receipt of writ of this order by the Trial Court.

**JUDGE**